



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 22, 2003

Ms. Alice Caruso  
Assistant Disclosure Officer  
Texas Workforce Commission  
101 East 15<sup>th</sup> Street  
Austin, Texas 78778-0001

OR2003-6630

Dear Ms. Caruso:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 187985.

The Texas Workforce Commission (the "commission") received a request for information pertaining to a claim filed by a specified person under the Texas Payday Act. You state that you will provide the requestor with some responsive information. You claim, however, that the remaining requested information is excepted from disclosure pursuant to sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that person may submit comments stating why information should or should not be released).

Initially, we must address the procedural requirements of section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask the attorney general for a decision as to whether requested information must be disclosed not later than the tenth business day after the date of receiving the written request for information. *See* Gov't Code § 552.301(b). In addition, section 552.301(e) provides that a governmental body that requests an attorney general decision under section 552.301(a) must, within a reasonable time, but not later than the fifteenth business day after the date of receiving the written request, submit to the attorney general: (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld; (2) a copy of the written request for information; (3) a signed statement as to the date on which the written request for information was received by the governmental body or evidence sufficient to establish that date; and (4) a copy of the specific information requested or representative samples of it, if a voluminous amount of the information was requested, labeled to indicate which exceptions apply to which parts of the information. *See* Gov't Code § 552.301(e).

You state that the commission received the request for information on July 7, 2003. However, after reviewing all of the information that has been submitted to our office by the commission and the requestor regarding this matter, we find that the commission received an initial request for this same information from the requestor prior to July 7, 2003. Thus, we find that the commission failed to comply with the procedural requirements of section 552.301 in requesting a decision from this office concerning the initial request. Because the commission failed to comply with the procedural requirements of section 552.301 in this matter, the information at issue is now presumed public. *See* Gov't Code § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The commission must demonstrate a compelling interest in order to overcome the presumption that the information at issue is now public. *See id.* Normally, a compelling interest is demonstrated when some other source of law makes the requested information confidential or when third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Although the commission claims that the information at issue is excepted from disclosure pursuant to section 552.107 of the Government Code, we note that section 552.107 is a discretionary exception to disclosure under the Public Information Act (the "Act") and, as such, does not constitute a compelling interest that is sufficient to overcome the existing presumption that the information at issue is now public.<sup>1</sup> Accordingly, we conclude that the commission may not withhold any portion of the submitted information under section 552.107 of the Government Code. However, since the commission also claims that the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code, we will address that claim.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information that is made confidential by other statutes. You claim that the submitted information is confidential under federal regulations. The regulations found at section 603 of title 20 of the Code of Federal Regulations send a clear message that "claim information" in the files of a state unemployment compensation agency is to be disclosed only to a "receiving agency," as defined in the regulations, or to other specified parties. *See* 20 C.F.R. §§ 603.1 *et seq.*; *see also* Open Records Decision No. 476 at 4 (1987). Otherwise, pursuant to section 603.7 of title 20 of the Code of Federal Regulations, state unemployment compensation agencies, such as the commission, must protect the

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<sup>1</sup> Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.,* Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential), 522 at 4 (1989) (discretionary exceptions in general), 473 (1987) (governmental body may waive statutory predecessor to section 552.111); *see also Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.--Dallas 1999, no pet.) (governmental body may waive section 552.103). Discretionary exceptions, therefore, do not constitute "other law" that makes information confidential.

confidentiality of claim information. "Claim information" means information regarding whether an individual is receiving, has received, or has applied for unemployment compensation, as well as "[a]ny other information contained in the records of the State employment compensation agency which is needed by the requesting agency to verify eligibility for, and the amount of, benefits." 20 C.F.R. § 603.2(c)(1), (5). We also note that the names of employers and employees who file unemployment compensation appeals fall within the definition of "claim information" and that the federal regulations prohibit the commission from disclosing this information. *See* Open Records Decision No. 476 at 4 (1987).

You argue that the federal Social Security Act requires states to comply with the directives of the United States Department of Labor (the "department") in administering state unemployment insurance ("UI") programs and that a department directive, UI Program Letter No. 34-97, specifies the conditions under which such claim information may be released. You do not inform us whether the release provisions of either part 603 or the UI Letter apply in this instance. Therefore, we conclude that, although the information at issue is confidential, it must be released to the requestor if any of the release provisions in UI Program Letter No. 34-97 or part 603 of title 20 of the Code of Federal Regulations apply. *See* UI Program Letter 34-97 (allowing disclosure to "private entity under a written agreement which requires 'informed consent' from the individual to whom the information pertains"); *see also* 20 C.F.R. pt. 603. Otherwise, the commission must withhold the submitted information in its entirety pursuant to section 552.101 of the Government Code in conjunction with these federal provisions.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be

provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/lmt

Ref: ID# 187985

Enc. Submitted documents

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